

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: DIGITEK PRODUCTS LIABILITY LITIGATION

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #4

I. Filing of Pretrial Order No. 4

A copy of this order shall be filed in each 2-08-md-1968 related case transferred to, removed to, or filed in this district up to and including 2-08-cv-1261 and shall apply to all such cases. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to each plaintiff at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to each new party upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at www.wvsc.uscourts.gov.

II. Initial Conference

An initial pretrial conference was held on October 10, 2008 by Judges Joseph R. Goodwin and Mary E. Stanley. The court first met with Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) in chambers to discuss agenda items for the pretrial conference and

preliminary matters concerning plaintiffs' organizational structure. Present at the Liaison Counsel meeting were Fred Thompson, III and Harry Bell, Jr. for the plaintiffs and Rebecca Betts, Matt Moriarty and Kristin Mayer for the defendants. The courtroom conference that followed was transcribed by Lisa Cook, Official Court Reporter. Counsel may contact Lisa Cook at (304) 347-3198 to request a copy of the transcript. A list of those individuals present at the initial pretrial conference is attached. A summary of the initial pretrial conference follows.

A. Coordination with State Digitek Cases

The court advised counsel of its intention to coordinate heavily with the judges and counsel involved in the state Digitek cases, especially in West Virginia and New Jersey where a majority of the state cases have been filed.

B. Plaintiffs' Steering Committee

The court advised counsel of the time and energy that shall be required of counsel appointed to the Plaintiffs' Steering Committee (PSC). The court instructed counsel that the PSC will be a working group representative of a majority of the plaintiffs. The court is flexible on the number of appointees and will take under serious advisement any recommendations showing a consensus of the plaintiffs made by the Plaintiffs' Liaison Counsel.

C. Acceptance of Service and Tolling Agreement

Defense counsel agreed to meet with Plaintiffs' Liaison Counsel to discuss issues related to acceptance of service and applicability of a master tolling agreement to be used in MDL 1968.

D. Preservation of Documents

The court advised counsel that the preservation order in Pretrial Order #1 will remain in place until such time as it is revised by the court.

E. Next Conference and Related Matters

The court advised counsel that the date of the next conference would be decided after the Plaintiffs' Steering Committee is appointed. Matters delayed for development at that time will include: reducing the number of defendants, status of protocols for Digitek tablet inspections, a proposed stipulated protective order, a proposed process for exchange of Plaintiffs' and Defendants' fact sheets, a proposed timeline for amendment of pleadings and adding parties and a proposed timetable for considering class certification motions.

F. Discovery

Judge Stanley advised counsel of her general expectations during the discovery process.

III. Organization of Counsel

A. Plaintiffs' Counsel

1. Lead and Liaison Counsel

The following are hereby appointed as Co-Lead counsel for plaintiffs:

Carl N. Frankovitch, Esq.
Frankovitch, Anetakis, Colantonio & Simon
337 Penco Road
Weirton, WV 26062
(304) 723-4400 phone
(304) 723-5892 Fax
e-mail: carln@facslaw.com

Fred Thompson, III, Esq.
Motley Rice, LLC
P. O. Box 1792
Mt. Pleasant, SC 29464
(843) 216-9000 Phone
(843) 216-9450 Fax
ftompson@motleyrice.com

Harry F. Bell, Jr., Esq.
Bell & Bands PLLC
P. O. Box 1723
Charleston 25326
(304) 345-1700 Phone
(304) 345-1715 Fax
hfbell@belllaw.com

Harry Bell Jr. shall continue his appointment as Liaison Counsel for the plaintiffs.

2. Duties and Responsibilities of Plaintiffs' Co-Lead and Liaison Counsel

a. Lead Counsel

The Plaintiffs' Co-Lead Counsel shall have the following responsibilities:

(1) Act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the court, subject to the right of any plaintiff's counsel to present non-repetitive individual or different positions as long as the presentation does not unduly delay the proceedings.

(2) Submit and argue any verbal or written motions presented to the court or magistrate judge on behalf of the plaintiffs as well as oppose, when necessary, any motions submitted by the defendant which involve matters within the sphere of the responsibilities of Lead Counsel.

(3) Examine witnesses and introduce evidence at hearings on behalf of plaintiffs.

(4) Negotiate and enter into stipulations with defendant regarding this litigation. All stipulations entered into by Lead Counsel, except for strictly administrative details such as scheduling, must be submitted for court approval and will not be binding until the court has ratified the stipulation. Any attorney not in agreement with a non-administrative stipulation shall file with the court a written objection thereto within ten (10) days after service by liaison counsel of the stipulation. Failure to object within the term allowed shall be deemed a waiver and the stipulation will automatically be binding on that party.

(5) Explore, develop and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation.

(6) Perform such other functions as may be expressly authorized by further orders of this court

b. Liaison Counsel

The Plaintiffs' Liaison Counsel shall have the duties enumerated in Pretrial Order #1.

Plaintiffs' Lead and Liaison Counsel shall be entitled to seek reimbursement for costs expended at the time and in a manner approved by the court.

3. Plaintiffs' Steering Committee

Numerous applications/nominations for the Plaintiffs' Steering Committee (PSC) positions have been filed in accordance with the procedures set forth in Pretrial Order # 2. the court, after having reviewed the applications and carefully considering the matter, hereby appoints the following members to the PSC:

Andres F. Alonso, Esq.
Parker, Waichman, Alonso LLP
111 Great Neck Road
Great Neck, New York 11021
(516) 466-6500 Phone
(516) 466-6665 Fax
aalonso@yourlawyer.com

K. Camp Bailey, Esq.
Bailey Perrin Bailey
Suite 2100
440 Louisiana Street
Houston, TX 77002-4206
(713) 425-7232 Phone
(713) 425-7101 Fax
cbailey@bpblaw.com

Harry F. Bell, Jr., Esq.
Bell & Bands PLLC
P. O. Box 1723
Charleston 25326
(304) 345-1700 Phone
(304) 345-1715 Fax
hfbell@belllaw.com

Robert J. Binstock, Esq.
Reich & Binstock
Suite 1000
4265 San Felipe
Houston, TX 77027
(713) 622-7271 Phone
(713) 623-8724 Fax
bbinstock@rbfirm.net

Robert Blanchard, Esq.
Levin, Papantonio, Thomas,
Mitchell, Echsner & Proctor, P.A.
316 South Baylen Street,
Suite 600
Pensacola, FL 32502
(850) 435-7095 Phone
(850) 435-6034 Fax

Lester L. Levy, Esq.
Wolf Popper LLP
845 Third Avenue
New York, NY 10022
(212) 759-4600 Phone
(212) 486-2093 Fax
llevy@wolfpopper.com

Peter A. Miller, Esq.
The Miller Firm LLC
The Sherman Bldg.
108 Railroad Avenue
Orange, VA 22960
(540) 672-4224 Phone
(540) 672-3055 Fax
pmiller@doctoratlaw.com

Ashley L. Ownby, Esq.
180 North Ocoee Street
P. O. Box 176
Chattanooga, TN 37364-0176
(423) 479-1324 Phone
(423) 472-6627 Fax
ashleyownby@ashleyownby.com

David M. Peterson, Esq.
Peterson & Associates, P.C.
Park Plaza Building
Suite 107
801 West 47th Street
Kansas City, MO 64112-1253
(816) 531-4440 Phone
(816) 531-0660 Fax
dmp@petersonlawfirm.com

Frank Mario Pitre, Esq.
Cotchett, Pitre & McCarthy
Suite 200
840 Malcolm Road
Burlingame, CA 94010
(650) 697-6000 Phone
(650) 697-0577 Fax
fpitre@cpmlegal.com

Ed Blizzard, Esq.
Blizzard, McCarthy & Nabers LLC
Suite 1710
440 Louisiana
Houston, TX 77002
(713) 844-2750 Phone
(713) 844-3755 Fax
ebizzard@blizzardlaw.com

John R. Climaco, Esq.
Climaco, Lefkowitz, Peca, Wilcox
& Garofoli Co., LPA
55 Public Square, Suite 1950
Cleveland, OH 44113
(216) 621-8484 Phone
(216) 771-1632 Fax
jrcлим@climacolaw.com

C. Brooks Cutter, Esq.
Kershaw, Cutter & Ratnoff LLP
401 Watt Avenue
Sacramento, CA 95864
(916) 448-9800 Phone
(916) 669-4499 Fax
bcutter@kcrlegal.com

Carl N. Frankovitch, Esq.
Frankovitch, Anetakis, Colantonio
& Simon
337 Penco Road
Weirton, WV 26062
(304) 723-4400 Phone
(304) 723-5892 Fax
carln@facslaw.com

Daniel N. Gallucci, Esq.
RodaNast, P.C.
801 Estelle Drive
Lancaster, PA 17601
(717) 892-3000 Phone
(717) 892-1200 Fax
dgallucci@rodanast.com

G. Erick Rosemond, Esq.
Hissey Kientz, L.L.P.
9442 Capital of Texas Highway N.
Suite 400
Austin, TX 78759
(512) 320-9100 Phone
(512) 320-9101 Fax
erosemond@hkllp.com

Shelly A. Sanford, Esq.
Sanford Pinedo LLP
2016 Bissonnet Street
Houston, TX 77005-1647
(713) 524-6677 Phone
(713) 524-6611 Fax
ssanford@sanfordpinedo.com

J. Paul Sizemore, Esq.
Giardi Keese
1126 Wilshire Boulevard
Los Angeles, CA 90017
(213) 977-0211 Phone
(213) 481-1554 Fax
psizemore@girardikeese.com

Fred Thompson, III, Esq.
Motley Rice, LLC
P. O. Box 1792
Mt. Pleasant, SC 29466
(843) 216-9000 Phone
(843) 216-9450 Fax
ftompson@motleyrice.com

Teresa Toriseva, Esq. (Chairperson)
Toriseva Law
1446 National Road
Wheeling, WV 26003
(304) 238-0066 Phone
(304) 233-0149 Fax
tct@torisevalaw.com

Stacy K Hauer, Esq.
Zimmerman Reed
651 Nicollet Mall
Suite 501
Minneapolis, MN 55402-4123
(612) 341-0400 Phone
(612) 341-0844 Fax
skh@zimmreed.com

Scott Wm. Weinstein, Esq.
Morgan & Morgan, P.A.
Suite 600
12800 University Drive
P. O. Box 9504
Fort Myers, FL 33906
(239) 433-6880 Phone
(239) 433-6836 Fax
sweinstein@forthepeople.com

Due the large nature of the PSC the court finds it necessary to appoint a PSC Chairperson to manage the responsibilities of the PSC in close coordination with Plaintiffs' Co-Lead Counsel. The court appoints Teresa Toriseva as Chairperson of the PSC. The PSC Chairperson's duties include the following: scheduling PSC meetings as requested by Co-Lead counsel and ensuring the performance of the duties of the PSC as directed by Co-Lead counsel, presiding over PSC meetings and keeping detailed notes and/or transcripts of such meetings, appearing at periodic court noticed status conferences, preparing periodic status reports summarizing the PSC's work and progress, performing other necessary administrative or logistical functions of the PSC as requested by Co-Lead counsel, and carrying out any other duties as the court may order.

The appointment of the PSC is of a personal nature. Accordingly, the above appointees cannot be substituted by other attorneys, including members of the appointee's law firm, to perform the PSC's exclusive functions, such as committee meetings and court appearances, except with prior approval of the court.

4. Duties and Responsibilities of Plaintiffs' Steering Committee

The Steering Committee will have the following responsibilities:

a. Discovery.

(1) Initiate, coordinate and conduct all pretrial discovery on behalf of all plaintiffs who file civil actions which are consolidated with the instant multidistrict litigation known as “MDL-1968, In re Digitek Products Liability Litigation.”

(2) Develop and propose to the court schedules for the commencement, execution and completion of all discovery on behalf of all plaintiffs.

(3) Cause to be issued in the name of all plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial of relevant issues found in the pleadings of this litigation. Similar requests, notices and subpoenas may be caused to be issued by the Steering Committee upon written request by an individual attorney in order to assist that attorney in the preparation of the pretrial stages of the particular claims asserted by their clients.

(4) Conduct all discovery in a coordinated and consolidated manner on behalf of and for the benefit of all plaintiffs. With regard to depositions, only two members of the Steering Committee or counsel duly authorized by them may question each deponent, provided that the second questioner is not repetitious. No attorney for plaintiffs may be excluded from attending the examination of witnesses and other proceedings. Such attorney may suggest questions to be posed to deponents through the designated Steering Committee members provided that such questions are not repetitious.

b. Miscellaneous.

(1) Call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or the court.

(2) Distribute copies of periodic status reports prepared by the

PSC Chairperson to all plaintiffs' attorneys. The reports shall be submitted by the PSC Chairperson to the Plaintiffs' Liaison Counsel who will promptly distribute copies. The periodic status and progress reports must be forwarded to all plaintiffs counsel at intervals of no more than sixty (60) days commencing from the date of this order, and more frequently in the event of significant matters appropriate for communication.

(3) Perform any tasks necessary and proper for the Steering Committee to accomplish its responsibilities as defined by the court's orders.

Reimbursement for costs and fees for services of the Steering Committee will be set at a time and in a manner established by the court after due notice to all counsel and after a hearing.

B. Defendant's Counsel

1. Liaison Counsel

Rebecca A. Betts shall continue her appointment as Liaison Counsel for defendants.

The Defendants' Liaison Counsel shall have the duties enumerated in Pretrial Order #3.

2. Lead Counsel

The following are hereby appointed as Co-Lead Counsel for defendants:

Richard A. Dean, Esq.
Tucker Ellis and West LLP
1150 Huntington Building
925 Euclid Avenue
Cleveland, Ohio 44115
216-696-2137 Phone

Matthew P. Moriarty
Tucker Ellis and West LLP
1150 Huntington Building
925 Euclid Avenue
Cleveland, Ohio 44115
216-696-2276 Phone

216-592-5009 Fax
richard.dean@tuckerellis.com

216-592-5009 Fax
matthew.moriarty@tuckerellis.com

Co-Lead counsel for the defendant shall have the following responsibilities:

- a. To determine (after consultation with the defendant) and present (in brief, oral argument or such other fashion as may be appropriate, personally or by a designee) to the court and opposing parties the position of the defendant on all matters arising during these pretrial proceedings;
- b. To delegate the specific tasks in a manner to ensure pretrial preparation for the defendant is conducted effectively, efficiently and economically; and
- c. To perform such other duties as may be incidental to proper coordination of the defendant's pretrial activities or authorized by further order of the court.

IV. Status Conferences

A. Dates

Dates for monthly status conferences will be determined at the first meeting of the PSC, in coordination with Co-Lead Counsel for the defendants. These dates will not be changed except by unanimous consent of all parties and by leave of court. In the event that this court determines that a scheduled status conference is not needed, the court will cancel that conference and notify Liaison Counsel of the cancellation. Additional conferences may be ordered from time to time by the court.

B. Participation

Any attorney representing any party, or any party unrepresented by counsel, may

attend status conferences, but only Liaison, Co-Lead Counsel and PSC Chairperson, or such other counsel as the court may permit, may actively participate in the status conferences. The Steering Committee may actively participate in the status conferences to the extent determined by the PSC Chairperson or as directed by the court.

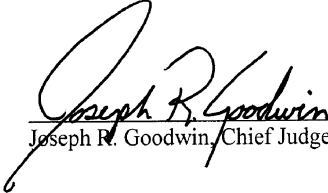
Status conferences may be held before Judge Goodwin, Judge Stanley, or both.

V. Representation of Clients

All attorneys representing parties to this litigation, regardless of their role in the management structure of the litigation and regardless of this court's designation of Lead and Liaison Counsel and a Plaintiffs' Steering Committee, continue to bear the responsibility to represent their individual client or clients.

The court **DIRECTS** the Clerk to file a copy of this order in each 2-08-md-1968 related case transferred to, removed to, or filed in this district up to and including 2-08-cv-1261 and it shall apply to all such cases.

ENTER: November 5, 2008


Joseph R. Goodwin, Chief Judge

Attendees at Initial Conference held October 10, 2008

Janet G. Abaray	Peter A. Miller
Andres F. Alonso	Matthew P. Moriarty
Michael A. Anderson	Ashley L. Ownby
K. Camp Bailey	Randall G. Phillips
Daniel E. Becnel, Jr.	G. Erick Rosemond
Harry F. Bell, Jr.	Shelly A. Sanford
Rebecca A. Betts	Karren Schaeffer
Robert Blanchard	Richard W. Schulte
John R. Climaco	Carmen Scott
Lauren M. DeLong	J. Paul Sizemore
G. Rick DiGiorgio	William W. Sweetnam
Kimberley R. Fields	David B. Thomas
Carl N. Frankovitch	Fred Thompson, III
Stacy Hauer	Teresa C. Toriseva
Michelle Kranz	Diane K. Zink
David Kuttles	
Hirlye R. Lutz, III	
Kristen L. Mayer	
Richard D. Meadow	
Karen Barth Menzies	